

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON**

**KEVIN BRATCHER**

Plaintiff,

**Case No.: 3:20-cv-02056-HZ**

**v.**

**TRIAL MANAGEMENT ORDER**

**POLK COUNTY, et al.**

Defendant.

1. The Pretrial Conference is set on 5/1/2023 in Portland Courtroom 15A.
2. The Jury Trial is set to begin on 5/9/2023 in Portland Courtroom 15A.

**First Wave of Documents Due 4 Weeks Before Pretrial Conference**

<b>Item</b>	<b>Description</b>	<b>Filed?</b>	<b>Copy?<sup>1</sup></b>
Exhibits and Exhibit Lists	<ul style="list-style-type: none"> <li>▪ Copy of each exhibit with exhibit list.</li> <li>▪ Plaintiff's exhibits shall be numbered on yellow exhibit stickers starting with "1."</li> <li>▪ Defendant's exhibits shall be numbered on blue exhibit stickers starting with "501."</li> <li>▪ The case number shall be printed on each exhibit sticker. Each exhibit shall be paginated.</li> <li>▪ <b>The original and judge's copy of all exhibits shall be placed into separate, three-hole binders with clearly marked index tabs, numbered for each exhibit.</b></li> <li>▪ Exhibit lists shall contain three columns to the right of the exhibit description labeled: "Joint" or "Preadmitted," "Offered," and "Received," in that order. Exhibit lists containing proposed supplemental exhibits must be captioned as "First (Second...) Amended Exhibit List" and must list the proposed exhibits as well as all previous exhibits. Impeachment exhibits shall be identified on the exhibit list simply as "Impeachment Exhibit" (no further description).</li> <li>▪ Original exhibits themselves (including original impeachment exhibits<sup>2</sup>) are not filed but must be <b>given to the CRD the morning of the first day of trial</b>, updated to reflect rulings from the <b>pretrial conference</b>.<sup>3</sup></li> </ul>	<b>DO NOT FILE EXHIBITS – ONLY FILE EXHIBIT LISTS</b>	Yes – to judge and to opposing counsel (except impeachment exhibits which are not provided to opposing counsel; only to the court in second wave)

Exhibits and Exhibit Lists <i>cont.</i>	<ul style="list-style-type: none"> <li>Attorneys to prepare and submit to the court an agreed-upon chart of all witness and exhibit objections which the court is to consider (see example #4 for format).</li> </ul>		
Lay Witness Statements and Expert Narratives	<ul style="list-style-type: none"> <li>List all lay witnesses to be called. Include the name and occupation, the estimated length of direct examination, and the complete <b>substance</b> of the testimony. Do not say, <i>"The witness will testify about the accident."</i> Say, <i>"The witness will testify that the defendant ran the red light and was going an estimated 30 miles per hour."</i></li> <li>Submit a written narrative/report for each expert setting forth their qualifications, the substance of opinions to be expressed in detail, and the facts and data upon which the opinions are based.</li> </ul>	Yes	Yes
Itemized List of Economic Damages	<ul style="list-style-type: none"> <li>Specify damages sought and how such damages will be proven – <i>i.e.</i>, through which exhibits and/or witness testimony.</li> </ul>	Yes	Yes
Deposition Designations	<ul style="list-style-type: none"> <li>Depositions offered in lieu of live testimony must be submitted to the court with the portions sought to be admitted highlighted on both the original and judge's copies.</li> <li>If more than one party wishes to use the same deposition in lieu of live testimony, a single deposition shall be submitted jointly with each party designating on the single copy, using different colored highlighting, those portions of the depositions it intends to use.</li> </ul>	<b>NO – DO NOT FILE</b>	Yes
Trial Memoranda	<ul style="list-style-type: none"> <li>Provide a brief summary of all material, factual and legal contentions along with the elements of each claim and/or defense. Trial memoranda are limited to 15 pages without leave of court.</li> </ul>	Yes	Yes
<p><sup>1</sup> All judge's copies of trial documents shall be 3–hole punched on the left side before submission. Judge's copies of documents to be submitted the same day as the original document is filed.</p> <p><sup>2</sup> See Second Wave #6 for submission of judge's copy of impeachment exhibits.</p> <p><sup>3</sup> Exhibits are also to be submitted in electronic format on DVD or thumb drive. Separate order to follow with instructions for providing the electronic exhibits for JERS.</p>			

**Second Wave of Documents Due 3 Weeks Before Pretrial Conference**

<b>Item</b>	<b>Description</b>	<b>Filed?</b>	<b>Copy?</b>
Motions in Limine	<ul style="list-style-type: none"> <li>All motions <i>in limine</i> shall be filed as sub-parts within a single document not to exceed 10 pages without leave of court. Responses to motions <i>in limine</i> (see third wave) shall not exceed 10 pages without leave of court. Conferral required – see LR 7–1.</li> </ul>	Yes	Yes
Proposed Voir Dire Questions	<ul style="list-style-type: none"> <li>The court will consider granting each party a brief opportunity to follow-up on the court's questioning during <i>voir dire</i>. If any questioning is undertaken by counsel, it shall be restricted to areas approved by the court.</li> <li>Proposed <i>voir dire</i> questions shall be submitted on CD–rom, or emailed to the courtroom deputy, in Word or WordPerfect format, and shall be grouped by subject matter, in the order to be asked.</li> </ul>	Yes	Yes
Proposed Joint Jury Instructions	<ul style="list-style-type: none"> <li>The parties shall submit a single set of jury instructions on CD–rom, or by email to the courtroom deputy, in Word or WordPerfect format, in the order that the parties wish them to be given.</li> <li>The parties shall identify all agreed upon instructions as "joint" instructions. If the parties disagree as to the form or content of any instruction, two alternative proposed instructions may be submitted along with a brief analysis (which shall include any relevant legal authority) as to why one instruction should be given over the other. These disputed instructions should be identified as to the party submitting (see example #1 for format).<sup>4</sup></li> <li>If there are more than 20 instructions, include an index. Where topics are covered by 9th Circuit Model Jury Instructions or by Oregon State Bar UCJI, simply indicate which number should be used. Each instruction, outside of the model, shall be on a separate sheet of paper citing authority in support of each principle.</li> </ul>	Yes	Yes
Proposed Verdict Form	<ul style="list-style-type: none"> <li>Each party shall submit a proposed verdict form on a CD–rom, or by email to the courtroom deputy, in Word or WordPerfect format.</li> </ul>	Yes	Yes
Objections to Witnesses (to be presented live or via deposition designation) or Exhibits	<ul style="list-style-type: none"> <li>Objections to witnesses and/or exhibits, and the responses thereto (see third wave), shall specify the witnesses or exhibits at issue and be grouped by type of legal or factual objection. Please explain the basis of each objection (see example #2 for format.)</li> </ul>	Yes	Yes
Impeachment Witnesses or Exhibits	<ul style="list-style-type: none"> <li>Names and statements of impeachment witnesses, and/or copies of impeachment exhibits shall be sealed and delivered to the court.</li> </ul>	<b>NO – DO NOT FILE</b>	Yes – to court only

<sup>4</sup> All examples may be found at [ord.uscourts.gov/herandez](http://ord.uscourts.gov/herandez).

**Third Wave of Documents Due 2 Weeks Before Pretrial Conference**

<b>Item</b>	<b>Filed?</b>	<b>Copy</b>
All rebuttal witness statements and exhibits.	Yes	Yes
Responses to (a) motions <i>in limine</i> , (b) objections to exhibits, and (c) objections to witnesses.	Yes	Yes
Plaintiff and defendant shall separately submit a one–page listing of all potential witnesses.	Yes	Yes

**Fourth Wave of Documents Due 2 Business Days Following Filing of Third Wave Documents**

<b>Item</b>	<b>Description</b>	<b>Filed?</b>	<b>Copy?</b>
Joint Ruling Chart – Motions <i>in Limine</i>	<ul style="list-style-type: none"> <li>Attorneys to prepare and submit to the court an agreed upon chart of all motions <i>in limine</i> which the court is to consider (see example #3 for format).</li> </ul>	<b>NO – DO NOT FILE</b>	Yes – and email to the courtroom deputy in Word format
Joint Ruling Chart – Witnesses and Exhibits	<ul style="list-style-type: none"> <li>Attorneys to prepare and submit to the court an agreed–upon chart of all witness and exhibit objections which the court is to consider (see example #4 for format).</li> </ul>	<b>NO – DO NOT FILE</b>	Yes – and email to the courtroom deputy in Word format
<b>NOTE:</b> If rulings on motions <i>in limine</i> relate to objections to witnesses and/or exhibits, please cross–reference.			

## Pretrial Conference

During the pretrial conference, be prepared to discuss the following:

- a. Exhibit and witness objections;
- b. What, if any, technological aids will be used to display exhibits to the jury;
- c. Deposition testimony objections;
- d. Motions *in limine*;
- e. Voir dire matters;
- f. Jury instructions;
- g. Verdict form; and,
- h. Settlement and/or mediation

**No exhibits or testimony will be received into evidence at trial, nor will any amended pleadings or supplemental jury instructions be accepted unless presented in accordance with this order. Late submissions will not be accepted absent a showing of good cause balanced against any prejudice to the opposing party.**

For further information on trial procedures, please refer to the Trial Court Guidelines for the District of Oregon at [ord.uscourts.gov/trial-court-guidelines](http://ord.uscourts.gov/trial-court-guidelines).

**IT IS SO ORDERED.**

**DATED** this 19th day of January, 2023

/s/Marco A. Hernandez

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Honorable Marco A. Hernandez  
United States District Judge.

<sup>1</sup> All judge's copies of trial documents shall be 3-hole punched on the left side before submission. Judge's copies of documents to be submitted the same day as the original document is filed.

<sup>2</sup> See Second Wave #6 for submission of judge's copy of impeachment exhibits.

<sup>3</sup> Exhibits are also to be submitted in electronic format on DVD or thumb drive. Separate order to follow with instructions for providing the electronic exhibits for JERS.

<sup>4</sup> All examples may be found at [ord.uscourts.gov/herandez](http://ord.uscourts.gov/herandez).

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**Case No.: 3:20-cv-02056-HZ**

**SUPPLEMENTAL JURY TRIAL  
MANAGEMENT ORDER  
REGARDING THE JERS SYSTEM**

To facilitate the use of the Jury Evidence Recording System (JERS) during trial in this action:

**IT IS HEREBY ORDERED** that no later than **May 5, 2023**, the parties shall submit their trial exhibits to the Court in electronic form per the instructions in the *Submission Requirements for Electronic Trial Exhibits* document found at [ord.uscourts.gov/jers-exhibits](http://ord.uscourts.gov/jers-exhibits).

Counsel shall contact the Courtroom Deputy to arrange for a demonstration of the JERS system, at which time counsel may wish to have present any staff member involved with the preparation or presentation of trial exhibits.

**DATED** this 19th day of January, 2023

/s/Marco A. Hernandez

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Honorable Marco A. Hernandez  
United States District Judge.